APPENDIX A

Judgment of the District Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

No. 5569 Civil

JAMES D. HODGSON, Secretary of Labor,
United States Department of Labor,

Plaintiff,

vs.

YELLOWSTONE PARK LINES, INC., a corporation,
and YELLOWSTONE PARK COMPANY, a corporation,

Defendants.

SUMMARY JUDGMENT

The above entitled matter having come on regularly for hearing before the Court upon the motion for summary judgment filed by the defendants and the cross-motion for summary judgment filed by the plaintiff herein, the defendants appearing by and through Lawrence A. Yonkee of the firm of Redle, Yonkee and Arney, and Douglas Foster of the firm of Lovejoy, Wasson, Lundgren and Ashton, and the plaintiff appearing by and through Tosh Suyematsu, Assistant United States Attorney for the District of Wyoming, and Roger L. Rutter and Ron Whiting, Attorneys, United States Department of Labor, and the Court having

heard the arguments of counsel took said matter under advisement. After considering the pleadings, the interrogatories and answers thereto, the affidavits filed herein and exhibits attached thereto, the request for admissions and the stipulation filed by the parties herein wherein each of the parties agreed there is no dispute as to any genuine issue of fact, and now being fully advised in the premises, the Court finds that 29 U.S.C. Section 213(a)(3) exempts the defendants from the minimum wage and overtime provisions of said Act, and the Court having prepared and filed simultaneously herewith its special findings, though not required to do so by Rule 56 of the Federal Rules of Civil Procedure, it is

ORDERED that the motion for summary judgment of the defendants, Yellowstone Park Lines, Inc., a corporation, and Yellowstone Park Company, a corporation, be, and the same is hereby, sustained.

IT IS FURTHER ORDERED that the complaint of the plaintiff be, and the same is hereby, dismissed with prejudice, the parties to pay their own costs.

Dated this 22nd day of May, 1972.

EWING T. KERR
Judge.

APPENDIX B

Special Findings of Fact of the District Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

No. 5569 Civil

JAMES D. HODGSON, Secretary of Labor,
United States Department of Labor,

Plaintiff,

vs.

YELLOWSTONE PARK LINES, INC., a corporation, and
YELLOWSTONE PARK COMPANY, a corporation,

Defendants.

SPECIAL FINDINGS OF FACT IN SUPPORT
OF SUMMARY JUDGMENT

1. The Court has jurisdiction in this matter pursuant to Section 17 of the Fair Labor Standards Act, 29 U.S.C. §217, and pursuant to 28 U.S.C. §§1337 and 1345.

2. Yellowstone Park Company was organized on June 6, 1936, under the laws of Delaware and is and has been a Delaware corporation from that date to the present.

3. Yellowstone Park Company is a wholly-owned subsidiary of General Host Corporation.

4. General Host Corporation is a New York corporation with its principal place of business at 245 Park Avenue, New York, New York.

5. Yellowstone Park Lines is a wholly-owned subsidiary of Yellowstone Park Company.

6. The employees of Yellowstone Park Company are engaged in commerce within the meaning of the Fair Labor Standards Act.

7. The business activities of Yellowstone Park Company and Yellowstone Park Lines are related and performed through unified operation or common control for a common business purpose and constitute an enterprise within the meaning of Section 3(r) of the Fair Labor Standards Act, 29 U.S.C. §203(r).

8. Yellowstone Park Company had annual gross volume from sales made or business done during the period from February 1, 1967, through January 31, 1969, of not less than $500,000.00 (exclusive of excise taxes at the retail level which are separately stated). Every year since February 1, 1969, Yellowstone Park Company had annual gross volume from sales made or business done of not less than $250,000.00 (exclusive of excise taxes at the retail level which are separately stated). 29 U.S.C. 203(s)(1).

9. The controlling provision of the Fair Labor Standards Act in this action is Section 13(a)(3), 29 U.S.C. §213 (a)(3). If Yellowstone Park Company qualifies as an

amusement or recreational establishment within the meaning and for the purpose of that section, the Company is exempt from Sections 6 and 7 of the Act, 29 U.S.C. §§206 and 207, pertaining to minimum wages and maximum hours.

10. Yellowstone Park was established by an Act of Congress dated March 1, 1872. This act was entitled: "An Act to set apart a certain Tract of Land lying near the Head Waters of the Yellowstone River as a public Park". Yellowstone Park Company operates exclusively within the geographic boundaries of Yellowstone Park and exclusively upon the tract of land set apart by the Congress as Yellowstone Park.

11. Yellowstone Park Company operates as a concessioner within Yellowstone National Park under the terms and conditions of an agreement between Yellowstone Park Company and the United States Department of the Interior, National Park Service. The first such agreement was entered into in 1936. On August 8, 1966, a new agreement was executed. This agreement is for a term of 30 years and expires on September 30, 1996. This agreement covers all of the Company's facilities within the Park.

12. The agreement between Yellowstone Park Company and the National Park Service provides that all rates and prices charged to the public by the Company are subject to Government regulation and approval. The agreement further provides that the Company must pay a franchise fee to the Government equal to 1½% of its gross receipts.

In accordance with the terms of the agreement, the Company is required to spend $10,000,000 by June 1975 in construction of new facilities and renovation of existing facilities. This expenditure must be made in accordance with plans approved by the Secretary of the Interior. Under the agreement, all accommodations and facilities operated by the Company must be operated in a manner that is satisfactory to the Government.

13. Yellowstone Park Company was formed and exists today to accommodate and service the needs of the thousands of people who visit the Park each year. In connection therewith, the Company maintains facilities for the public throughout the Park. These facilities include hotels, inns, lodges and cabins located at specifically designated places in the Park, such as Old Faithful, Mammoth, Lake, Canyon Village, Fishing Bridge and Roosevelt.

14. During the 5½ month period from May 16 to October 30, 1971, Yellowstone Park Company had $6,442,463 in sales, amounting to approximately 98% of the total sales realized by the Company during 1971. The Company thereby meets the seasonal test set forth in Section 13(a)(3)(B) of the Fair Labor Standards Act, 29 U.S.C. §213(a)(3)(B).

15. The facilities of Yellowstone Park Company were opened during 1971 in accordance with the following schedule:

Open	*Location*	*Close*
May 7	Old Faithful Campers Cabins	Oct. 11
May 14	Mammoth Motor Inn	Oct. 8
May 20	Lake Lodge	Sept. 23
May 22	Old Faithful Inn	Sept. 25
May 24	Mammoth Inn Cabins	Sept. 7
June 1	Fishing Bridge Trailer Village	Sept. 21
June 4	Lake Hotel	Aug. 30
June 4	Canyon Village Motor Lodge	Sept. 7
June 11	Old Faithful Lodge	Sept. 7
June 11	Fishing Bridge Cabins	Aug. 27
June 12	Roosevelt Lodge	Aug. 30
June 18	Lake Hotel Cabins	Aug. 30

The Company thereby meets the seasonal test set forth in Section 13(a)(3)(A) of the Fair Labor Standards Act, 29 U. S. C. §213(a)(3)(A).

16. Yellowstone Park Company is managed on a day-to-day basis by Mr. John Amerman, Executive Vice President and General Manager, Mr. Robert Boyd, Vice President-Finance and Controller, and the several department directors, such as the director of marketing and sales, the director of food and beverage and the director of lodging. Each facility is under their direct supervision and management. They determine the date when each facility shall be opened and closed, the rates and prices each will charge, the or-

ganization of each and the manner and policy under which each will operate, the salary of each employee, and the hiring, firing, assignment and transfer of all employees, subject only to the provisions of the agreement between the Company and the National Park Service and the general supervision of the parent, General Host Corporation.

17. Yellowstone Park Company maintains a central accounting office within Yellowstone Park. The central accounting office is under the management of Robert Boyd. The duties of the employees of that office are to perform all accounting and payroll functions for all locations and facilities operated by the Company. That office maintains all of the books and records for all of the facilities and operations of the Company. Those books and records consist of the following:

1. All Sales journals.
2. General Ledger.
3. All Payroll Records.
4. Accounts Payable and Accounts Receivable Records.
5. All Bank Records.
6. Files on Customer Prepaid Reservations, Room Folios, Food Checks.
7. Records on Inventories of Merchandise and Fixed Assets for All Operations.

They are maintained in the first instance on the basis of departments, such as room sales, food sales and beverage

sales. No separate books and records are kept for the individual facilities.

18. In 1971, a total of 2289 people, mostly college students, were employed by Yellowstone Park Company. With the exception of a skeleton staff of less than 50 employees who work during the winter months, all of the employees employed by the Company only work during all or part of the summer season. So many college students apply for summer positions that the Company can only hire approximately one out of seven applicants, even though the Company states in its "Information Circular For Prospective Employees of the Yellowstone Park Company" that if it is necessary for the employee to earn the entire cost of his next year's schooling, the Company offers few positions that accomplish this purpose.

19. All employees are hired by Yellowstone Park Company to work for the Company, and they are assigned by the Company to specific jobs and departments according to the needs of the Company. Each employee is employed under the terms and conditions of an Employee Work Agreement between the Company and the individual employee. Among the jobs which are filled each summer according to the Company's needs are those of location manager, front office manager and location controller for each of the Company's facilities. The employees who fill these positions are hired only for the particular summer season. They are not part of the management team that runs the Company's operations and determines its policy. The location controller is responsible to the general accounting office, not to the lo-

cation manager. The location and front office managers are responsible to Mr. John Amerman and the manager's office. They cannot hire, fire, transfer or reassign any of the other employees of the Company, although they are hired and can be fired, transferred or reassigned by central management. They do not determine the hours that any of the Company's other employees shall work. This is determined and scheduled by central management.

20. During the course of the summer season, a number of employees are transferred either from one of the Yellowstone Park Company's facilities to another or from one job to another, all for the purpose of satisfying the needs of the Company. In 1971, a total of 272 employees were transferred during the summer by the Company. The Employee Work Agreement and the "Information Circular for Prospective Employees of the Yellowstone Park Company" advise the prospective employee that the Company may transfer or reassign him.

21. Each employee of Yellowstone Park Company in a particular job category is paid according to the same salary scale regardless of the facility where he works. Each employee in a specific job category is governed by the same regulations for dress, hours and conduct according to that category, irrespective of the particular facility where the employee works.

22. Each employee of Yellowstone Park Company is required to adhere to the rules and regulations of the National Park Service. Any violation of Park rules and regulations is punishable by the United States Government.

The Company will not retain any employee that the Superintendent of the National Park Service or his duly authorized representative may declare unfit for service within the Park.

23. Each employee of Yellowstone Park Company is issued a name badge in the name of Yellowstone Park Company. The name badge is uniform for all locations and facilities, except for the inclusion of the particular employee's name. This is also true with respect to the employee's identification card.

24. All employees of Yellowstone Park Company are paid by the Company. The employees' checks are prepared by the general accounting office. The Company cashes the employees' checks as a convenience to them since there is no banking facility within Yellowstone Park.

25. Overtime for any of the employees of Yellowstone Park Company may be paid only on the specific authorization of the General Manager, John Amerman, irrespective of the particular facility where the employee works.

26. Each employee's time card is issued by Yellowstone Park Company and bears the caption, "Yellowstone Park Company—Yellowstone National Park, Wyoming", irrespective of the particular facility where the employee works.

27. Each employee of Yellowstone Park Company is charged a nominal sum of $3.50 per day for meals and lodging, irrespective of the particular facility where the employee works.

28. All employees of Yellowstone Park Company are furnished with ample facilities for, and many forms of, recreation and entertainment, including dances, films, sports tournaments, talent shows, field trips, music programs and an employee newspaper.

29. Yellowstone Park Company maintains an advertising and promotion office which advertises all of the Company's facilities in Yellowstone Park by means of a brochure or booklet issued by the Company. This brochure emphasizes the many scenic wonders and other attractions of the Park, including Old Faithful geyser and the thousands of other geysers, waterfalls, canyons, mountains, forests and trout streams, plus the many animals. It urges the reader to stay inside the Park where there are accommodations for 9,000 overnight guests at hotels, cottages, and cabins and a variety of eating places from self-service counters to pleasant hotel dining rooms.

Dated this 22nd day of May, 1972.

EWING T. KERR
Judge.

APPENDIX C

Opinion of the United States Court of Appeals

[Filed May 10, 1973]

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

MARCH TERM, 1973

No. 72-1591

PETER J. BRENNAN, Secretary of Labor,
United States Department of Labor,

Plaintiff-Appellant,

—v.—

YELLOWSTONE PARK LINES, INC., a corporation,
and YELLOWSTONE PARK COMPANY, a corporation,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

(D.C. No. 5569)

DONALD S. SHIRE, Attorney, U. S. Department of Labor (Alfred G. Albert, Acting Solicitor of Labor, Carin Ann Clauss, Associate Solicitor, John K. Light, Attorney, U. S. Department of Labor, and Harper Barnes, Regional Solicitor, on the brief) *for Plaintiff-Appellant.*

DOUGLAS FOSTER (Lovejoy, Wasson, Lundgren & Ashton; Redle, Yonkee & Arney; Of Counsel, Lawrence A. Yonkee, on the brief) *for Defendants-Appellees.*

Before BREITENSTEIN, *Circuit Judge,* DURFEE,* *Judge, Court of Claims,* and DOYLE, *Circuit Judge.*

DOYLE, *Circuit Judge.*

This is an appeal from a judgment rendered by the United States District Court for the District of Wyoming denying the petition of the Secretary of Labor for an injunction against Yellowstone Park Lines, Inc. and Yellowstone Park Company from violating the minimum wage and record keeping requirements of the Fair Labor Standards Act. Plaintiff sought a judicial determination that the Act applied to the numerous employees of the Company who were working in Yellowstone National Park. Jurisdiction was founded upon 29 U.S.C. § 217 and 28 U.S.C. §§ 1337 and 1345. The trial court ruled that these employee relationships were exempt on the basis that all of the operations of Yellowstone Park Lines, Inc. and Yellowstone Park Company constituted a single establishment and as such were exempt under 29 U.S.C. § 213(a)(3), the employees being "employed by an establishment which is an amusement or recreational establishment." [1]

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* Sitting by designation.

[1] 29 U.S.C. § 213 provides in part:

(a) The provisions of sections 206 and 207 of this title shall not apply with respect to—

* * *

(3) any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year,

Based on the geographic separation of the various enterprises, the Secretary maintained that there was not a single establishment but, rather, a number of separate and distinct establishments.

The parties agreed that if each physically separate facility or location operated by defendants constituted a single establishment, the Secretary would be entitled to an injunction for violation of the Act. On the other hand, the parties agreed that if all Company operations in Yellowstone National Park constituted a single establishment, the decision should be that the defendants are exempt.

Summary judgment motions were filed by both sides, and following arguments and factual presentations in the form of affidavits, the judgment was in favor of the defendants.

Yellowstone Park Company is a Delaware corporation which owns and operates tourist facilities in Yellowstone National Park. It has a contract with the Secretary of the Interior which was first entered into in 1936 and was renewed again in 1966 for an additional term of 30 years.

The Company's concessions include hotels, inns, lodges, cabins and restaurants. These are located at widely separated places including Mammoth, Hot Springs, Old Faithful, Yellowstone Lake and Canyon Village. The Company

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or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33⅓ per centum of its average receipts for the other six months of such year; or

* * *

It is undisputed that defendants meet the seasonal requirements of § 213(a)(3).

facilities at Hot Springs are located some 51 miles from the facilities at Old Faithful, whereas the facilities at West Thumb near Yellowstone Lake are 68 miles from Mammoth, and the facilities at Roosevelt Lodge are 60 miles from Old Faithful, and were shown to be 56 miles from West Thumb.

Wide variations in the various areas are shown—different types of scenery and different formations including canyons and mountain streams, lakes and geysers. There are marked differences in the various areas in terms of size and individuality. The recreational facilities also vary from one area to another as do the hotel facilities.

Ordinarily employees are primarily attached to one facility, that at which they are working. They are supervised by the manager of that particular facility who has his own day to day standards. The accounting methods are set up so as to reveal whether each individual unit makes a profit.

Two classes of employees serve more than one facility. One group includes maids, maintenance personnel and boiler room operators, who work at more than one establishment. The other group is made up of those who work mainly at one facility, but performing work which benefits one other. These are employees who work in the central accounting office, manager's office, reservations, advertising and promotion, laundries, print shop, personnel office, warehouse, garage, central fire watch office and ice manufacturing plant.

The manager's office, central reservations, advertising and promotion are located in the summer at Mammoth and the rest of the year at Gardiner. These offices serve each of the Company's facilities. The laundries are op-

erated at Mammoth Lake Lodge and Old Faithful Inn and each serves several different facilities from those locations. The print shop is located at Mammoth, but serves each of the Company facilities in the Park. The personnel office, the warehouse and garage are all located in Gardiner and serve all of the Company locations and facilities.

The facilities operated by the Company are located at the major scenic places and tourist attractions in the Park, including Old Faithful Geyser, Mammoth, Hot Springs, Yellowstone Lake and the Grand Canyon of Yellowstone. At Old Faithful there are several lodges including Old Faithful Inn, Old Faithful Lodge and Old Faithful Campers Cabins. At Yellowstone Lake are the Lake Hotel, Lake Lodge and Lake Hotel Cabins. All of these facilities are advertised in one brochure. The Company also maintains buses for transporting tourists from one area to another. The various facilities have a central management which includes a number of department directors. Policy decisions are made by the management and are applicable to all of the facilities.

The statutory provision which the Company claims furnishes it an exemption is § 213(a)(3) which provides an exemption for any employee employed by an amusement or recreational establishment which meets certain seasonal tests. Undoubtedly the enterprise is carried on by the Company and its wholly-owned subsidiary, Yellowstone Park Lines, Inc., and is recreational in character.

The trial court made special findings in support of the motion for summary judgment and in these findings it described in detailed fashion the operation of the Yellowstone Park Company within the Yellowstone National Park pointing out that there is central management of the

numerous facilities within the Park headed up by officers of the Company and a member of the so-called department directors such as director of marketing and sales, director of food and beverage and the director of lodging. According to the findings, some 2,289 people, mostly college students, were at the time in question employed by the Yellowstone Park Company.

The court pointed out that the controlling provision of the Fair Labor Standards Act is 29 U.S.C. § 213(a)(3) and said:

> If Yellowstone Park Company qualifies as an amusement or recreational establishment within the meaning and for the purpose of that section, the Company is exempt from Sections 6 and 7 of the Act, 29 U.S.C. §§ 206 and 207, pertaining to minimum wages and maximum hours.

The court went on to hold that as a result of the integrated management of the Company it was a recreational establishment and concluded in its judgment:

> After considering the pleadings, the interrogatories and answers thereto, the affidavits filed herein and exhibits attached thereto, the request for admissions and the stipulation filed by the parties herein wherein each of the parties agreed there is no dispute as to any genuine issue of fact, and now being fully advised in the premises, the Court finds that 29 U.S.C. Section 213(a)(3) exempts the defendants from the minimum wage and overtime provisions of said Act * * *

The exemption which we are now considering was provided in the Fair Labor Standards Act so as to allow recreational facilities to employ young people on a seasonal basis and not have to pay the relatively high minimum wages required by the Fair Labor Standards Act. Based on this legislative purpose the Company maintains that the provision should be given a liberal construction so as to carry out this basic purpose. This is, however, contrary to accepted rules of construction which call for broadly construing coverage provisions and narrowly construing the exemption provisions. Also, it runs contrary to the decisions of the Supreme Court and at least one decision of this court.

An early Supreme Court case, Phillips Co. v. Walling, 324 U.S. 490 (1945), considered the term "retail establishment" in connection with an exemption provided for in § 13 (a)(2). Involved in the *Phillips* case was a chain enterprise consisting of 49 grocery stores together with a central warehouse and office building. It was argued in that case, much in the same manner as it is argued here, that the numerous stores, the warehouse and the office building were a single establishment so as to bring the entire enterprise within the exemption. This integration argument was, however, rejected by the Supreme Court which held that Congress used the word "establishment" to mean a distinct physical place of business rather than an integrated business or enterprise. Each unit was, therefore, held to be a separate establishment.

Much the same result was reached in Mitchell v. Bekins Van & Storage Co., 352 U.S. 1027 (1957), wherein it was held that the exemption did not apply to physically separate

warehouses even though they were operated as a single economic unit. Once again the emphasis was placed on the term "establishment" and it meaning a single physically separate place of business.

Finally, this court in Shultz v. Adair's Cafeterias, Inc., 420 F.2d 390 (10th Cir. 1969), had before it a case involving six cafeterias having a central bakery. The employer argued that the establishment as a whole was entitled to an exemption and the district court agreed. This decision was, however, reversed, our court ruling that the district court's determination had failed to follow the interpretation which had been given to the term "retail establishment" by the Supreme Court in the *Phillips Co.* and *Mitchell* cases. In reversing the district court it was said:

> The lower court refused to test the Adair enterprise, for exemption, on an individual establishment basis. Instead, all businesses, including the bakery, were viewed together as being proprietarily united and functionally integrated, and physical separation was considered immaterial. This proposition runs directly contrary to the letter and spirit of the Fair Labor Standards Act and does not comport with the cases interpreting that law.

420 F.2d at 394.

After discussing the applicability of the *Phillips Co.* and *Mitchell* rulings this court continued:

> The exemption in § 213(a)(2) has a limited reach, touching only those retail or service establishments as are comparable to the local corner grocery store, local

> drug store or local department store which sells directly to the ultimate consumer. Prosperous retail businesses eventually lose their identity as establishments exempt from the Act. It may occur through an increased volume of interstate sales or, as here, by physically serving a nonexempt establishment. A company operating numerous food stores cannot include as a part of its retail business its candy kitchens. Fred Wolferman, Inc. v. Gustafson, 169 F.2d 759 (8th Cir. 1948). The operator of sandwich counters cannot include as retail its commissary where sandwiches are prepared. Armstrong Co. v. Walling, 161 F.2d 515 (1st Cir. 1947). Similarly, a restaurant-cafeteria chain may not include its bakery as part of its retail establishments.

420 F.2d at 394-95.

We view *Adair's* as being not only definitive of the term "establishment", but also as illustrating the broad coverage —narrow exemption approach to this Act.

We recognize that there are differences between the so-called recreational exemption which we are now considering and the retail establishment exemption considered in *Adair's Cafeterias* and in *Phillips Co.* as well as *Mitchell.* Much of the law which deals with the retail establishment exemption is concerned with the difference between retail and wholesale activities and with the question whether the particular retail unit is engaged in local business or interstate commerce. None of this, however, affects the basic issue presented to us which is whether the term "establish-

ment" as used in § 13(a)(3) is to be judged in the same light as that term is judged under § 13(a)(2) and as in *Phillips Co.*, *Mitchell* and *Adair's*. We are of the opinion that the distances and the heterogeneous nature of the areas of interest do not lend to the Yellowstone Park enterprises being considered as one integrated unit subject to exemption under § 13(a)(3). Thus, we must reverse the trial court's judgment holding that all of Yellowstone Park is to be considered as a single integrated recreational area.

The parties have stipulated that the plaintiff is entitled to an injunction restraining future violation of the Act if it prevails on the question of what constitutes an establishment for purposes of § 13(a)(3) of the Act. Therefore, having resolved this issue in favor of the plaintiff-appellant, it follows that the cause must be reversed and an injunction is to be granted and entered in favor of the plaintiff and against the defendants.

Inasmuch as a question existed at the time that this matter was orally argued as to the scope of the employees exempted and the employees covered, clarification was requested. Since the cause was argued there has been an exchange of letters and in essence the employees exempted are those who are employed by an exempt establishment. Those who are covered are, generally speaking, those central employees who serve several or all of the Company's establishments at various locations throughout the Park. In its clarification letter plaintiff-appellant adds:

> We concede the applicability of the exemption to all of defendants' employees in the Park, including maids and boiler room workers, *except* central employees who

perform functions which serve several, or all, of the company's establishments at the various locations throughout the Park. Among those *not* within the exemption are the following: (1) central accounting office employees (R. 39, 46-48); (2) manager's office employees (R. 48-50); (3) reservations office employees (R. 48-50); (4) advertising and promotion office employees (R. 48-50); (5) laundry employees (R. 40, 51-52); (6) print shop employees (R. 40, 52-53); (7) personnel office employees (R. 40, 54-55); (8) warehouse employees (R. 40, 54-55); (9) garage employees (R. 40, 54-55); (10) ice manufacturing plant employees (R. 29, 40); (11) central fire watch employees (R. 56-57); and (12) central maintenance and repair workers who perform functions which serve several or all of the company's establishments in the Park (R. 51, 60-61). Since these central employees are not employed by any specific establishment, but rather by the entire enterprise, they would be exempt only if *all* of the defendants' facilities throughout the Park constitute a single "establishment."

In our view the concession contained in the plaintiff-appellant's letter is entirely consistent with the view which we have taken as to the meaning of the term "establishment."

Accordingly, the judgment of the district court is reversed, and the cause is remanded with directions to the district court to enter an injunction in accordance with the views expressed above.

APPENDIX D

Other Statutes Involved

"§213. *Exemptions*

(a) The provisions of section 206 . . . and section 207 of this title shall not apply with respect to—

• • •

(2) any employee employed by any retail or service establishment . . . if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 203(s) of this title or such establishment has an annual dollar volume of sales which is less than $250,000 (exclusive of excise taxes at the retail level which are separately stated). A 'retail or service establishment' shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry;"

Section 213(b)(8) provides:

"(b) The provisions of section 207 of this title shall not apply with respect to—

• • •

(8) any employee employed by an establishment which is a hotel, motel, or restaurant; • • • "